

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

---

William Hoover,

Plaintiff,

v.

Bluestem Brands, Inc. d/b/a Fingerhut; and  
DOES 1-10, inclusive,

Defendants.

---

:  
:  
:  
: Civil Action No.: \_\_\_\_\_  
:  
:  
:  
:  
:  
:  
:

**COMPLAINT**

Plaintiff, William Hoover, says by way of Complaint against Defendant,  
Bluestem Brands, Inc. d/b/a Fingerhut, as follows:

**JURISDICTION**

1. This action arises out of Defendants' repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* ("TCPA"), and the invasions of Plaintiff's personal privacy by the Defendants and its agents in their illegal efforts to collect a consumer debt.

2. This Court has supplemental jurisdiction over all other claims in this action, as all such claims arise out of the same case or controversy as Defendant's violations of the FDCPA pursuant to 28 U.S.C. § 1367.

3. Venue is proper in the U.S. District Court for the District of New Jersey pursuant to 28 U.S.C. § 1391(b), as Defendant transacts business in the State of New Jersey.

### **PARTIES**

4. The Plaintiff, William Hoover (“Plaintiff”), is an adult individual residing in Little Egg Harbor, New Jersey, and is a “consumer” as the term is defined by 15 U.S.C. § 1692a(3), and is a “person” as defined by 47 U.S.C. § 153(10).

5. Defendant Bluestem Brands, Inc. d/b/a Fingerhut (“Bluestem”), is a Delaware business entity with an address of 6509 Flying Cloud Drive, Eden Prairie, Minnesota 55344, operating as a collection agency, and is a “debt collector” as the term is defined by 15 U.S.C. § 1692a(6), and is a “person” as defined by 47 U.S.C. § 153(10).

6. Does 1-10 (the “Collectors”) are individual collectors employed by Bluestem and whose identities are currently unknown to the Plaintiff. One or more of the Collectors may be joined as parties once their identities are disclosed through discovery.

7. Bluestem at all times acted by and through one or more of the Collectors.

### **ALLEGATIONS APPLICABLE TO ALL COUNTS**

#### **A. The Debt**

8. The Plaintiff allegedly incurred a financial obligation (the “Debt”) to Fingerhut (the “Creditor”).

9. The Debt arose from services provided by the Creditor which were primarily for family, personal or household purposes and which meets the definition of a “debt” under 15 U.S.C. § 1692a(5).

10. The Debt was purchased, assigned or transferred to Bluestem for collection, or Bluestem was employed by the Creditor to collect the Debt.

11. The Defendants attempted to collect the Debt and, as such, engaged in “communications” as defined in 15 U.S.C. § 1692a(2).

**B. Bluestem Engages in Harassment and Abusive Tactics**

12. In or around October 2013, Bluestem began calling Plaintiff in an attempt to collect the Debt.

13. At all times mentioned herein, Bluestem called Plaintiff's cellular telephone by using an automated telephone dialer system ("ATDS") and/or by using an artificial or prerecorded voice ("automated calls").

14. When Plaintiff answered the automated calls, Bluestem used an automated or prerecorded voice advising Plaintiff to hold for the next available customer service representative.

15. Plaintiff acknowledges the existence of the Debt, but is without adequate means with which to repay it.

16. Plaintiff never consented to receive phone calls to his cellular phone.

17. In Early December, Plaintiff spoke with a live representative whom he advised that he was experiencing financial difficulties and could in no way afford to pay the Debt at this time, and requested that all calls to him cease.

18. Despite being advised that Plaintiff was unable to pay the Debt and requested to stop the calls, Bluestem continued to place automated calls to Plaintiff at an excessive and harassing rate, calling Plaintiff daily, sometimes several times per day.

19. The calls were annoying to Plaintiff and intruded on his right to be free from invasions of his privacy.

**C. Plaintiff Suffered Actual Damages**

20. The Plaintiff has suffered and continues to suffer actual damages as a result of the Defendants' unlawful conduct.

21. As a direct consequence of the Defendants' acts, practices and conduct, the Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional distress, fear, frustration and embarrassment.

22. The Defendants' conduct was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

**COUNT I**

**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**  
**15 U.S.C. § 1692, et seq.**

23. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

24. The Defendants' conduct violated 15 U.S.C. § 1692d in that Defendants engaged in behavior the natural consequence of which was to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt.

25. The Defendants' conduct violated 15 U.S.C. § 1692d(5) in that Defendants caused a phone to ring repeatedly and engaged the Plaintiff in telephone conversations, with the intent to annoy and harass.

26. The Defendants' conduct violated 15 U.S.C. § 1692f in that Defendants used unfair and unconscionable means to collect a debt.

27. The foregoing acts and omissions of the Defendants constitute numerous and multiple violations of the FDCPA, including every one of the above-cited provisions.

28. The Plaintiff is entitled to damages as a result of Defendants' violations.

**COUNT II**

**INVASION OF PRIVACY BY INTRUSION UPON SECLUSION**

29. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

30. The Restatement of Torts, Second, § 652(b) ascribes liability for intrusion upon seclusion where one individual, “intentionally intrudes...upon the solitude or seclusion of another, or his private affairs or concerns,” and further states that “[said individual] is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person.”

31. New Jersey further recognizes Plaintiff’s right to be free from invasions of privacy. Thus, the Defendant violated New Jersey state law.

32. The Defendants’ telephone calls to the Plaintiff were so persistent and repeated with such frequency as to be considered, “hounding [the Plaintiff],” and “a substantial burden to [his] existence,” amounting to an invasion of privacy as defined by the Restatement of Torts, Second, § 652(b).

33. The Defendants’ conduct of engaging in the foregoing illegal collection activities resulted in multiple invasions of privacy that would be considered highly offensive to a reasonable person.

34. As a result of the intrusions and invasions enumerated above, the Plaintiff is entitled to actual damages from the Defendants in an amount to be determined at trial.

35. All acts of the Defendants and their agents were committed with malice, intent, wantonness, and recklessness, and as such, the Plaintiff is entitled to punitive damages from the Defendants.

**COUNT III**

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –**  
**47 U.S.C. § 227, et seq.**

36. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

37. Plaintiff never provided his cellular telephone number to Bluestem or the Creditor and never provided his consent to be contacted on his cellular telephone.

38. Without Plaintiff's consent and over his objection, Bluestem contacted the Plaintiff by using an automatic telephone dialing system and by using a prerecorded or artificial voice on his cellular telephone in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

39. Bluestem continued to place automated calls to Plaintiff's cellular telephone knowing there was no consent to continue the calls. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

40. The telephone number called by Bluestem was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

41. The calls from Bluestem to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

42. Bluestem's telephone system has the capacity to store numbers in a random and sequential manner and uses the system to place the calls.

43. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

44. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff prays that judgment be entered against the Defendants:

1. Actual damages including, but not limited to, the emotional distress the Plaintiff has suffered (and continues to suffer) as a result of the intentional, reckless, and/or negligent FDCPA violations and intentional, reckless, and/or negligent invasions of privacy pursuant to 15 U.S.C. § 1692k(a)(1);
2. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
3. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3);
4. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
5. Liquidated damages;
6. Punitive damages; and
7. Such other and further relief that the Court may deem just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: February 14, 2014

Respectfully submitted,

By: /s/ Sofia Balile

Sofia Balile, Esq.  
Lemberg & Associates LLC  
1100 Summer Street  
Stamford, CT 06905  
Phone: (917) 981-0849  
Fax: (888) 953-6237